

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BIOVAIL LABORATORIES INTERNATIONAL SRL)	
a corporation of Barbados,)	
)	
Plaintiff,)	C.A. Nos. 05-586 (KAJ)
)	05-730 (KAJ)
v.)	06-620 (KAJ)
)	(CONSOLIDATED)
ANDRX PHARMACEUTICALS, LLC and)	
ANDRX CORPORATION,)	
)	
Defendants.)	

**BIOVAIL’S MOTION FOR AN EXTENSION OF TIME
TO RESPOND TO ANDRX’S MOTION FOR SUMMARY
JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 5,529,791**

Plaintiff Biovail Laboratories International SRL (“Biovail”) hereby respectfully moves the Court for an order in the form attached hereto, extending Biovail’s time to respond to Andrx Pharmaceuticals, LLC and Andrx Corporation’s (collectively “Andrx”) motion for summary judgment of non-infringement of U.S. Patent No. 5,529,791 (the “’791 patent”) (D.I. 108) from December 11, 2006 to January 19, 2007.

This consolidated litigation is a patent infringement action concerning Andrx’s infringement of two U.S. patents -- the ’791 patent and United States Patent No. 7,108,866 (the “’866 patent”). Expert reports as to the ’791 patent have been served, but expert depositions remain to be taken. Case dispositive motions must be filed by May 18, 2007. Trial with respect to both the ’791 and ’866 patents is currently scheduled for January 14, 2008. (D.I. 97).

On November 27, 2006, more than five months before the case dispositive motion deadline, Andrx filed a motion for summary judgment of non-infringement of the ’791 patent. In its motion, Andrx argues that Biovail is collaterally estopped from asserting infringement based on another court’s decision as to different Andrx products. Andrx’s motion, among other things,

raises highly technical issues regarding differences between prior Andrx products and the Andrx products that are the subject of this litigation.

Biovail respectfully requests that this Court grant it an extension until January 19, 2007 to respond to Andrx's motion for summary judgment. Biovail's request for an extension is needed because its technical expert, Dr. Gerald S. Brenner, is not available until after the December and New Year's holidays. Further, Biovail recently changed counsel from the Fitzpatrick Cella law firm to the Paul Hastings law firm, and is in the process of transferring the voluminous case files and establishing and organizing them at Paul Hastings.¹

Prior to filing this motion, Biovail asked Andrx whether it would agree to the requested extension, but Andrx refused, offering only a one-week extension, until December 18, 2006. Moreover, Andrx commented that "Andrx does not understand Biovail's request for an extension to the extent that the request is based on the availability of experts. Expert reports and rebuttals were served long ago." Andrx's comment makes little sense given that collateral estoppel is an issue on which Andrx bears the burden of proof, and it did not raise collateral estoppel in its expert reports. Indeed, none of the expert reports are directed to this defense.

Biovail's requested extension is reasonable in light of the upcoming holidays, the unavailability of its technical expert until early January and its change in counsel.

¹ Joseph O'Malley, Jr., lead counsel for Biovail, resigned from Fitzpatrick Cella in September and is now a partner at Paul Hastings. On October 27, 2006, Biovail substituted the Paul Hastings law firm for the Fitzpatrick Cella law firm, and intends to request a revision of the case schedule at the upcoming December 18, 2006 telephone conference that takes into account the change in law firms. The proposed revision to the schedule, which Andrx has refused, would not disturb the Court's current dates for a final pretrial conference and trial.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Karen Jacobs Loudon

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December 4, 2006
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CERTIFICATE PURSUANT TO RULE 7.1.1

I certify pursuant to D. Del. L.R. 7.1.1 that plaintiff's counsel conferred with counsel for defendants concerning the subject matter of the foregoing motion but were not able to reach agreement.

/s/ Karen Jacobs Loudon

Karen Jacobs Loudon

December 4, 2006

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ORDER

This _____ day of December, 2006, the Court having considered Biovail's Motion For An Extension Of Time To Respond To Defendants' Motion For Summary Judgment Of Non-Infringement Of U.S. Patent No. 5,529,791 (the "Motion"), IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. The time of Biovail Laboratories International SRL to respond to defendants' motion for summary judgment of non-infringement of U.S. Patent No. 5,529,791 (D.I. 108) is hereby extended through and including January 19, 2007.

U.S.D.J.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on December 4, 2006, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

Richard L. Horwitz
POTTER ANDERSON & CORROON LLP

and that I caused copies to be served upon the following in the manner indicated:

BY HAND AND E-MAIL

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